

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

JOHN S. PENROD,)	
)	
Petitioner/Defendant,)	
)	CIVIL NO. 07-cv-002-JPG
vs.)	
)	CRIMINAL NO. 03-cr-40024
UNITED STATES of AMERICA ,)	
)	
Respondent/Plaintiff.)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

This matter is before the Court on Petitioner's motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255. On August 20, 2003, a jury found Petitioner guilty of one count of conspiracy to distribute and possess with intent to distribute more than 50 grams of cocaine base, in violation of 21 U.S.C. § 846, and four counts of distribution of less than five grams of cocaine base, in violation of 21 U.S.C. § 841(a)(1). On January 30, 2004, Petitioner was sentenced to 384 months imprisonment, five years supervised release, a fine of \$500, and a special assessment of \$500. Petitioner appealed. The Court of Appeals for the Seventh Circuit ordered a limited remand pursuant to *United States v. Paladino*, 401 F.3d 471 (7th Cir. 2005), asking the Court to determine whether it would impose the same sentence with the knowledge that the Sentencing Guidelines were not mandatory. The Court responded that even if the Guidelines were not mandatory, it would impose the same sentence. Based on that response, the Court of Appeals found Petitioner's sentence reasonable, and affirmed the conviction and sentence on October 3, 2005, *see United States v. Penrod*, 145 Fed. Appx. 188 (7th Cir. 2005). On January 3, 2007, Petitioner filed the instant motion

pursuant to section 2255.

In his motion, Petitioner raises one ground for relief: that his trial counsel was ineffective in not challenging or objecting to the false testimony of witnesses used to determine the drug amounts attributable to him.

The Court **ORDERS** the Government to file a response to Petitioner's motion within **THIRTY (30) DAYS** of the date of this Order. The Government shall, as part of its response, attach all relevant portions of the record.

IT IS SO ORDERED.

Dated: February 28, 2007

s/ J. Phil Gilbert
U. S. District Judge